

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11610-RGS

VISIBLE SYSTEMS CORPORATION

v.

UNISYS CORPORATION

MEMORANDUM AND ORDER ON
DEFENDANTS' MOTION TO STRIKE

March 27, 2007

STEARNS, D.J.

On July 20, 2004, Visible System Corporation (VSC) filed this Complaint against Unisys Corporation alleging, among other claims, trademark infringement. On November 13, 2006, Unisys Corporation filed a motion for summary judgment. As part of its opposition, VSC included a supplemental affidavit from expert witness Malcolm Lane, affidavits from two members of the information technology software field, Clement Cote and Clive Finkelstein, and an article from the Journal of Marketing Research. On January 19, 2007, Unisys Corporation filed a motion to strike all four exhibits arguing that all of the affidavits contain expert witness testimony that was not previously disclosed and that the article constitutes inadmissible hearsay. VSC has opposed the motion only as to the affidavits. VSC argues persuasively that the late supplementation of the Lane affidavit was in response to Unisys' tardy production of the PITO documents and that while Cote and Finkelstein could qualify as expert witnesses, their testimony is only offered for factual purposes. Consequently, the court will DENY the motion as to the Lane Affidavit and allow VSC to supplement its expert disclosure accordingly. The Cote and Finkelstein affidavits

will be accepted only to the extent that they contain testimony based on personal knowledge or observation.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE